

Before the
Administrative Hearing Commission
State of Missouri



GARY MICHAEL HARTLEY,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1536 ACC
)	
MISSOURI DEPARTMENT OF NATURAL)	
RESOURCES,)	
)	
Respondent.)	

DECISION

We grant the motion to dismiss filed by the Missouri Department of Natural Resources (“the Department”) because Gary Michael Hartley filed his appeal out of time.

Procedure

On August 26, 2013, Hartley filed a complaint appealing the Department’s Notice and Order to Abate Violations and Pay Administrative Penalties (“the Order”). On October 4, 2013, the Department filed a motion to dismiss.

Findings of Fact

1. On July 24, 2013, the Department sent the Order to Hartley by certified mail.
2. On August 26, 2013, Harley filed his appeal.
3. August 26, 2013, was more than 30 days after July 24, 2013.

Conclusions of Law

The Department argues that we should dismiss this case because Hartley filed his appeal out of time. We have no jurisdiction to hear a petition filed out of time.¹ If we have no jurisdiction to hear the petition, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.²

Section 621.250³ states:

Except as otherwise provided by law, any person or entity who is a party to, or who is aggrieved or adversely affected by, any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section **may file a notice of appeal with the administrative hearing commission within thirty days after any such finding, order, decision, or assessment is placed in the United States mail** or within thirty days of any such finding, order, decision, or assessment being delivered, whichever is earlier.

The Department attached to its motion the certified mail receipt proving that the date it mailed the Order was July 24, 2013. Harley filed his appeal out of time. We grant the Department's motion to dismiss.

Summary

We grant the motion to dismiss and cancel the hearing.

SO ORDERED on October 9, 2013.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹ *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc), *cert. denied*, 488 U.S. 893 (1988).

² *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

³ RSMo. Supp. 2012 (emphasis added).